TRANSCRIPT OF RECORD.

651

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 268.

CHESTER A. ARTHUR, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

FREDERICK VIETOR, GEORGE F. VIETOR, CARL VIETOR, THOMAS VIETOR, JR., AND FRITZ ACHELIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 7, 1885.

accession 23867

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22953

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Frederick Vietor, George F. Vietor, Carl Vietor, Thomas Vietor, jr., and Fritz Achelis, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened to the great damage of the said Chester A. Arthur, as by his complaint appear'. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-five, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 16th day of June, in the year of our Lord one thousand eight hundred and eighty-five.

TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

HOYT H. WHEELER.

2 (Indorsed:) 2887. U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Frederick Vietor & al., defendants in error. Writ of error. Elihu Root, attorney for pl'ff in error. Due service of a copy of the within writ of error is hereby admitted this 17 day of June, 1885. H. J. Begly, attorney for defendants in error.

(Stamped:) U. S. circuit court. Filed Jun. 22, 1885. Timothy Griffith, clerk.

UNITED STATES OF AMERICA,
Southern District of New York:

3 I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to thirty-seven inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, against Frederick Vietor, George F. Vietor, Carl Vietor, Thomas Vietor, jr., and Fritz Achelis, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifth day of August, in the year of our

Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

4 Superior court of the city of New York.

FREDERICK VIETOR, GEORGE F. VIETOR, Carl Vietor, Thomas Vietor, junior, and Feritz Achelis, plaintiffs,
against
CHESTER A. ARTHUR, DEFENDANT.

No. 1. Summons.
For relief.

To the above-named defendant:

You are hereby summoned, and required to answer the complaint in this action, which will be filed in the office of the clerk of the superior court of the city of New York, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 29 Nassau street, in said city, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

Dated New York, Feby. 12, 1874.

H. J. BEGLY,
Plaintiffs' Attorney.

(Endorsed:) Superior court of the city of New York—Vietor against Arthur—No. 1. Summons. H. J. Begly, plaintiffs' attorney, 29 Nassau street.

5 (Copy.)

The President of the United States of America to the judges of the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Frederick Vietor, et al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 15th day of June, 1874, as fully and amply as the same are remaining before you, by whatever names the said partiss may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

[L. S.]

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 5th day of June, in the year one thousand eight hundred and seventy-four.

KENNETH G. WHITE,
Clerk.

GEORGE BLISS,
United States Attorney, Attorney for Defendant.

6 (Endorsed:) U. S. circuit court. Chester A. Arthur, ads. F. Vietor & al. Copy certiorari. George Bliss, U. S. attorney, attorney for defendant. To H. J. Begly, plaintiffs' attorney.

7 U. S. circuit court, southern district of New York.

FREDERICK VIETOR & AL.
against
CHESTER A. ARTHUR.
} Commenced Feb'y 12, 1874. No. 1.

SIR: You will please take notice that the defendant demands a copy of plaintiffs' complaint, and that a rule has this day been entered in the Book of Common Rules, kept in the office of the clerk of the U. S. circuit court at the city of New York, requiring the plaintiff to file and serve declaration in this cause within twenty days after service of a notice of the entry of said rule, or be non-prossed.

New York, March 18, 1876.

GEORGE BLISS,
Attorney for Defendant.

To H. J. BEGLEY, Esq.,
Attorney for Plaintiffs.

(Endorsed) U. S. circuit court. Frederick Vietor & al., against Chester A. Arthur. Notice of entry of rule to declare. Geo. Bliss, defendant's attorney. To H. J. Begley, Apl. 3, 1876.

8 The United States of America. Circuit court of the United States for the southern district of New York, in the second circuit—of the nineteenth day of April, in the year of our Lord one thousand eight hundred and seventy-six.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Frederick Vietor, George F. Vietor, Carl Vietor, Thomas Vietor, jr., and Fritz Achelis (No. 1), plaintiffs in this suit come here into court, and by H. J. Begly, their attorneys, suggest and give the court now here to understand and be informed that heretofore, to wit, on the 12th day of February, 1874, an action was commenced in the superior court of the city of New York, according to the laws of the State of New York, and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs against Chester A. Arthur, the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said superior court on the same day. That the defendant afterwards, by George Bliss, esquire, his attorney, duly appeared in said action, and such proceedings were thereupon had that afterwards, and on the 15th day of June, in the year of our Lord one thousand eight hundred and seventy-four, the said action was in due form of law removed by writ of certiorari for further prosecution and trial into this court, according to the act of
9 Congress in such case made and provided; and the clerk of the said superior court did thereupon return the said writ with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the said plaintiffs accordingly, by H. J. Begly, their attorneys, complain of the defendant in this suit being in custody, &c., of a plea of trespass on the case for promises; for that, whereas, the defendant heretofore, to wit, on the day of the date of this declaration, to wit: at the city of New York, in the district aforesaid, was indebted to the said plaintiffs in the sum of one thousand six hundred and sixty-one and 85–100 dollars, lawful money of the United States of America, for duties on certain merchandise, to wit: Hosiery and gloves imported into and entered at the collection district of the United States for the city of New York on or about the following dates, to wit: Apl. 16, July 30, Aug. 4, 27, Sept. 9, 15, Oct. 28, & Nov. 17, in the year one thousand eight hundred and seventy-three, in the following ships or vessels, to wit: Citys of Antwerp, Brooklyn, Paris, Limerick, Paris, Brooklyn, Cities of Montreal and Paris (2 entries) from Liverpool, unlawfully demanded, exacted, and
10 received at the city of New York, in the district aforesaid, by the said defendant, then collector of the customs for the district aforesaid, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest in writing in due form of law.

And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the sum of money above mentioned, when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of four thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant. And for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant. And for other money by the said defendant, before that time had, and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid,
and at the place aforesaid, undertook and then and there faithfully
11 promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant (although often afterwards requested so to do) has not as yet paid the said several sums of money above mentioned or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiffs of four thousand dollars, and therefore the said plaintiffs bring suit, &c.

H. J. BEGLY,
Attorney for Plaintiffs.

(Endorsed:) U. S. circuit court. F. Vietor et al. vs. C. A. Arthur, No. 1. Declaration. H. J. Begly, No. 29 Nassau street, attorney for

plaintiffs. To George Bliss, esq., defts. att'y. Sir: Please to take notice that on filing a declaration in this cause, with a copy whereof you are hereby served, a rule has been entered in the book of common rules, kept in the office of the clerk of this court, at the city of New York, requiring the within-named defendant to plead to said declaration in twenty days after service of a copy thereof and notice of said rule on his attorney, or judgment, &c. New York, April, 1876. H. J. Begly, attorney for plaintiffs, 29 Nassau street. Due service of a copy of within declaration and above notice is hereby admitted this 22 day of April, 1876. Geo. Bliss, defts. atty.

12 United States circuit court, southern district of New York.

CHESTER A. ARTHUR *ads.* FREDERICK VIETOR ET AL. } Plea.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To H. J. BEGLY, Esq.,
Plaintiffs' Attorney.

(Endorsed:) U. S. circuit court. Chester A. Arthur ads. F. Vietor & al. Plea. George Bliss, attorney for defendant: You will please take notice that the plea of the defendant in the above cause, of which the within is a copy was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, April 26, 1876. Yours, &c., George Bliss, defendant's attorney. To H. J. Begly, esq., plaintiffs' attorney.

13 Circuit court of the United States for the southern district of New York.

F. VIETOR ET AL. *vs.* C. A. ARTHUR. } No. 1.

NEW YORK, *April 2d*, 1874.

GEORGE BLISS, Esq.,
Defendant's Attorney:

SIR: Please take notice that the annexed is a bill of particulars of the plaintiffs' demand in this case, and for the recovery of which this action is brought by reason of money illegally exacted of the plaintiffs by the defendant, as collector of the port of New York, on merchandise imported in the vessels and at the dates in the annexed schedule.

Truly yours.

H. J. BEGLY,
Plaintiffs' Attorney.

And the said plaintiffs accordingly, by H. J. Begly, their attorneys, complain of the defendant in this suit being in custody, &c., of a plea of trespass on the case for promises; for that, whereas, the defendant heretofore, to wit, on the day of the date of this declaration, to wit: at the city of New York, in the district aforesaid, was indebted to the said plaintiffs in the sum of one thousand six hundred and sixty-one and 85–100 dollars, lawful money of the United States of America, for duties on certain merchandise, to wit: Hosiery and gloves imported into and entered at the collection district of the United States for the city of New York on or about the following dates, to wit: Apl. 16, July 30, Aug. 4, 27, Sept. 9, 15, Oct. 28, & Nov. 17, in the year one thousand eight hundred and seventy-three, in the following ships or vessels, to wit: Citys of Antwerp, Brooklyn, Paris, Limerick, Paris, Brooklyn, Cities of Montreal and Paris (2 entries) from Liverpool, unlawfully demanded, exacted, and
10 received at the city of New York, in the district aforesaid, by the said defendant, then collector of the customs for the district aforesaid, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest in writing in due form of law.

And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the sum of money above mentioned, when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of four thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant. And for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant. And for other money by the said defendant, before that time had, and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully
11 promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant (although often afterwards requested so to do) has not as yet paid the said several sums of money above mentioned or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiffs of four thousand dollars, and therefore the said plaintiffs bring suit, &c.

H. J. BEGLY,
Attorney for Plaintiffs.

(Endorsed:) U. S. circuit court. F. Vietor et al. vs. C. A. Arthur, No. 1. Declaration. H. J. Begly, No. 29 Nassau street, attorney for

plaintiffs. To George Bliss, esq., defts. att'y. Sir: Please to take notice that on filing a declaration in this cause, with a copy whereof you are hereby served, a rule has been entered in the book of common rules, kept in the office of the clerk of this court, at the city of New York, requiring the within-named defendant to plead to said declaration in twenty days after service of a copy thereof and notice of said rule on his attorney, or judgment, &c. New York, April, 1876. H. J. Begly, attorney for plaintiffs, 29 Nassau street. Due service of a copy of within declaration and above notice is hereby admitted this 22 day of April, 1876. Geo. Bliss, defts. atty.

12 United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
FREDERICK VIETOR ET AL. } Plea.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To H. J. BEGLY, Esq.,
Plaintiffs' Attorney.

(Endorsed:) U. S. circuit court. Chester A. Arthur ads. F. Vietor & al. Plea. George Bliss, attorney for defendant: You will please take notice that the plea of the defendant in the above cause, of which the within is a copy was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, April 26, 1876. Yours, &c., George Bliss, defendant's attorney. To H. J. Begly, esq., plaintiffs' attorney.

13 Circuit court of the United States for the southern district of New York.

F. VIETOR ET AL.
vs.
C. A. ARTHUR. } No. 1.

NEW YORK, *April 2d*, 1874.

GEORGE BLISS, Esq.,
Defendant's Attorney:

SIR: Please take notice that the annexed is a bill of particulars of the plaintiffs' demand in this case, and for the recovery of which this action is brought by reason of money illegally exacted of the plaintiffs by the defendant, as collector of the port of New York, on merchandise imported in the vessels and at the dates in the annexed schedule.

Truly yours.

H. J. BEGLY,
Plaintiffs' Attorney.

Name of importer—Fred'k Vietor & Achelis. *Description of merchandise*—Hosiery, gloves, and similar articles of worsted made on frames. *Place whence imported*—Liverpool.

14, 15, and 16.]

Name of vessel.	Invoice.	Entry at custom-house.	Payment of duties.	Filing protest.	Appeal to Sec't of Treasury.	Decision on appeal.	Am't of excess claimed.
	1873.	1873.	1873.	1873.	1873.	1873.	156. 60
City of Antwerp	Mar. 24	April 6	Aug. 16	Sept. 12	Sept. 16	Nov. 20	492. 30
City of Brooklyn	July 15	July 30	July 30 & 31	Sept. 12	Sept. 16	Nov. 20	385. 65
City of Paris	July 15	Aug. 4	Aug. 4 & 5	Sept. 12	Sept. 16	Nov. 20	168. 30
City of Limerick	Aug. 1	Aug. 27	Aug. 27-8	Sept. 12	Sept. 16	Nov. 20	109. 80
City of Paris	Aug. 23	Sept. 9	Sept. 9-10	Sept. 12	Sept. 16	Nov. 20	63. 90
City of Brooklyn	Aug. 27	Sept. 15	Sept. 15	Sept. 15	Sept. 16	Nov. 20	103. 95
City of Montreal	Oct. 10	Oct. 28	Oct. 28	Oct. 30	Dec. 2	Dec. 15	90. 45
City of Paris	Oct. 25	Nov. 17	Nov. 17	Nov. 18	Dec. 2	Dec. 15	90. 90
City of Paris	Oct. 25	Nov. 17	Nov. 17	Nov. 18	Dec. 2	Dec. 15	1, 661. 85

(Endorsed:) United States circuit court. F. Vietor & al. vs. C. A. Arthur. No. 1. Bill of particulars of plaintiffs' demand. H. J. Begly, plaintiffs' attorney, 29 Nassau street. To George Bliss, esq., defendant's attorney. Due service of a copy of the within bill of particulars is hereby admitted. New York, April 2d, 1874. Geo. Bliss, def't's att'y.

17 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Friday, the 7th day of December, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The honorable Alfred C. Coxe, sitting as circuit judge.

FREDERICK VIETOR ET AL.
vs.
CHESTER A. ARTHUR. } 2887.

Now comes the plaintiffs by Stanley, Clarke & Smith, their attorneys, and move the trial of this cause. Likewise comes the defendant by Sam'l B. Clark, asst. U. S. atty., his attorney. Thereupon a jury is empanelled, and the cause proceeds to trial. After hearing the evidence of the parties, and the arguments of counsel, on December 10, 1883, the court directs the jury to find a verdict for the plaintiffs, the amount thereof to be adjusted at the custom-house. Thereupon the jury render a verdict whereby they find for the plaintiffs, the amount of said verdict to be adjusted at the custom-house.

18 The court orders that the defendant have a stay of proceedings on the verdict until ten days after the decision on the motion for a new trial herein, and that a certificate of probable cause be entered herein.

A copy.

TIMOTHY GRIFFITH,
Clerk.

19 Circuit court of the United States for the southern district of New York.

FREDERICK VIETOR ET AL.
vs.
CHESTER A. ARTHUR. } N. S. 2887.

H. J. BEGLY, Esq.,
Plaintiffs' Attorney:

SIR: Please take notice that upon the annexed affidavit of Samuel B. Clarke, verified April 7th, 1885, and upon all the proceedings already had in the above-entitled action, application will be made to the court at the United States court-rooms in the post-office building in the city of New York, on the 8th day of May, 1885, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order as prayed for in said affidavit, and for such other order or relief in the premises as to the court may seem proper.

Dated New York, May 1, 1885.

Yours, &c.,

ELIHU ROOT,
U. S. Attorney for Defendant.

20 Circuit court of the United States for the southern district of New York.

FREDERICK VIETOR ET AL.
vs.
CHESTER A. ARTHUR. } N. S. 2887.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

SAMUEL B. CLARKE, assistant U. S. attorney, being duly sworn, says:

This action was tried before Judge Coxe at the October term, 1883, Stephen G. Clarke, esq., representing the plaintiff, and deponent representing the defendant; that the result of the trial was a general verdict in favor of the plaintiff, subject by stipulation of counsel to adjustment at the custom-house; that annexed hereto, marked Schedule A, is a statement by the collector showing the amount of duties on plaintiffs' theory exacted in excess, with a reference to each importation specified in the bill of particulars, stating also as to each importation whether or not protest, appeal, and suit were in time, and also giving the date on which the duty levied on each importation was paid; that, as appears by said statement, the amount illegally exacted, and which, under the plaintiffs' theory, the plaintiffs are entitled to recover with reference to all the importa-
21 tions where the formal requisites to the maintenance of suit were complied with, is $1,049.45; that the district attorney has been directed by the Secretary of the Treasury to take the case to the Supreme Court, and that a bill of exceptions has been settled and filed; that the plaintiffs' counsel have been repeatedly requested to have judgment entered in the case, but have hitherto failed to comply with that request.

Wherefore deponent asks that the clerk of the court be directed to enter

judgment for said sum of $1,049.45, with interest on the items thereof specified in said statement, from the dates of payment given in said statement.

SAMUEL B. CLARKE.

Sworn to before me this 17th day of April, 1885.
[SEAL.] BENJAMIN BARKER, JR.,
Notary Public, N. Y. Co.

22 U. S. circuit court.

F. VIETOR ET AL.
vs.
WILLIAM H. ROBERTSON. } No. 2887. February 19, '74.

[Schedule A (N. Y. Cat., No. 617 B.)]

Description of merchandise.—Worsted-knit goods, value over 80 c. per lb.; assessed at 50 c. per lb. and 35 c. ad val., less 10 % ; claimed to be dutiable as "merino hosiery" at 35 c., less 10 %; claim is made for refund of the specific duty of 50 c. per lb. only, less 10 %.

Under what clause of tariff law classified.—533 Heyl's Digest and sec. 2nd act of June 6, '72.

Under what clause plaintiff claims should be classified.—22nd sec. act of M'ch 2, '61, and 13th sec. act of July 14, '62.

Statement for U. S. district attorney, as requested in his letter of September 16, 1884.

Have protest, appeal, and suit been in time.	Vessel.	Amount of duties paid on weight only.	Amount, under plaintiffs' theory, paid in excess.	Date of payment.
Yes	C. Antwerp	15 53	15 53	Aug. 16, 1874.
No	C. Brooklyn	*492 30	492 30	July 31, 1873.
Yes	C. Paris†	385 92	385 92	Aug. 5, 1873.
Do	C. Limerick	189 00	189 00	Aug. 28, 1873.
Do	C. Paris	109 80	109 80	Sept. 10, 1873.
Do	C. Brooklyn	63 90	63 90	Sept. 16, 1873.
Do	C. Montreal	103 95	193 95	Oct. 29, 1873.
Do	C. Paris	90 45	90 45	June 20, 1874.
Do	C. Paris	90 90	90 90	Nov. 18, 1873.
	Total	1,541 75	1,541 75	
	S. S. C. Brooklyn, deduct (not in time)	492 30	492 30	
	Balance	1,049 45	1,049 45	

*C. Brooklyn, protest not in time. †The protests are herewith transmitted.

M April 13, '85.

I hereby certify the figures in the foregoing statement to be correct.
C. T.
(Signed) W. H. ROBERTSON,
Collector.

23 (Endorsed.) (N. Y. Cat., No. 617 B.) Custom-house, collector's office, New York, April 14, 1885, No. 2887.——— court. Vietor vs. Arthur. Statement for U. S. district attorney, as requested in his letter of September 16, 1884.

24 (Endorsed:) U. S. circuit court, southern district of New York. Frederick Vietor et al. vs. Chester A. Arthur. Motion papers

upon application for an order directing the clerk to enter judgment. Elihu Root, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted, New York, May 1, 1885. To H. J. Begley, attorney for plaintiff. Adjourned by consent *by consent* to next motion day, same hour. Dated May 8, 1885, H. J. Begley, plffs. atty. May 29, 1885, motion day.

25 United States circuit court, southern district of New York.

FREDERICK VIETOR, GEORGE F. VIETOR, CARL Vietor, jr., and Fritz Achelis
vs.
CHESTER A. ARTHUR.
} No. 2887.

This cause having come on for trial at the October term, 1883, of this court, before Hon. Alfred C. Coxe and a jury, and a verdict having been rendered for the plaintiffs for an amount to be adjusted at the custom-house at New York, and the amount having been so adjusted, and being with interest the sum of $1,849.61, and the costs of said plaintiffs having been taxed by consent at the sum of forty-eight $\frac{35}{100}$ dollars. Now on motion of H. J. Begley, esq., attorney for plaintiffs, it is ordered that judgment be entered for the sum of $48.35 costs, amounting in all to eighteen hundred and ninety-seven $\frac{96}{100}$ dollars.

New York, June 12, 1885.

Judgment signed this 13th day of June, 1885.

(Sg'd) JOHN A. SHIELDS,
Deputy Clerk.

1,849 61
48 35
1,897 96

26 (Endorsed:) U. S. circuit court. Frederick Vietor et al. vs. Chester A. Arthur. Judgment roll. H. J. Begley, atty. for plffs. U. S. circuit court, filed June 13th, 1885. Timothy Griffith, clerk.

27 Circuit court of the United States, southern district of New York.

FREDERICK VIETOR AND ANOTHER
against
CHESTER A. ARTHUR.
} N. S. 2887. Bill of exceptions.

And thereafter, to wit, at the October term, 1883, of this court this action came on to be tried before the Hon. Alfred C. Coxe, judge of the district court of the United States for the northern district of New York, duly assigned to hold this court, and a jury duly empanelled and sworn to try the issue herein.

The parties appeared by their counsel; Stephen G. Clarke, esq., for the plaintiffs; Samuel B. Clarke and Elihu Root, esqs., for the defendant.

The plaintiffs' counsel having opened his case to the jury put in evidence tending to show that between April and November, 1873, the plaintiffs made several importations of hosiery from Liverpool, port of

England, into the port of New York, and that the appraiser at said port returned said hosiery in some cases as "knit goods, wool hosiery over 80, 50, 35 less 10%"; in other cases as "worsted knit goods," &c.; that the collector of said port liquidated the duties on said hosiery at the
28 rate of 35 per centum ad valorem and 50 cents a pound, less a deduction of 10%; that the plaintiffs protested in writing against such liquidation upon grounds which they stated as follows: "Because said merchandise, being merino hosiery, and similar articles made on frames, not otherwise provided for, is only liable to duty under the 22nd section of the tariff act of March 2nd, 1861, and the 13th section of the tariff act of July 16th, 1862, at the rate of 35 per centum ad valorem, less 10 per cent. under the 2nd section of the act of June 6th, 1862, as manufactures wholly or in part of wool or hair of the alpaca goat or other like animal."

It was thereupon conceded by defendant's counsel that an appeal was duly made to the Secretary of the Treasury and action brought in due time after the answer of the Secretary; and it was agreed by counsel for both parties that if the court should direct a verdict for the plaintifi it should be directed to be adjusted, as to amount, at the custom-house.

Plaintiff then put in evidence tending to show that the stockings produced, marked plaintiffs' Exhibit 5, was a sample of their importation, and the plaintiffs' counsel admitted, for the purpose of this case, that all of the goods involved herein contain from 10 to 20 per cent. of either wool or worsted, the other component material being cotton; and that the wool or worsted formed an appreciable portion of the value of the goods.

The plaintiffs further offered evidence tending to show that the
29 articles imported by them similar to the samples marked in evidence were stockings, that they were worn by men, women, and children, and that they were made on frames. Plaintiffs then rested.

Defendant's counsel then offered evidence tending to show that knit goods are textile fabrics composed of a single thread united in a series of loops, corresponding to the old-fashioned hand-knitting process, and that plaintiffs' importations were so made; and further that all fabrics made on frames are knit goods.

The defendant then rested.

Plaintiffs then offered evidence tending to show that the term "knit goods" used in trade and commerce has no different or other meaning than its meaning among men in general; that there are knit goods known in trade and commerce which were not made on frames, but which were made by hand, and that there are other goods, as caps, gloves, leggings, mitts, socks, stockings, and drawers, made in whole or in part of worsted, worn by men, women, and children, which are made on a frame and knit and which are also knit by hand; that while the result of knitting by hand and of the manufacture on a frame of a fabric consisting of a single thread is the production of a textile fabric composed of a series of connecting loops which are alike in each case, yet the processes by which they are produced are dissimilar; that the result of the process of manufacturing upon frames and knitting by hand is the same, although the two processes are dissimilar; also that there are no textile fabrics made on frames which are known in trade and commerce, except fabrics
30 composed of cotton, wool or worsted, silk, linen, or a mixture of these materials. Both parties then rested.

Plaintiffs then moved the court to direct the jury to find a verdict in their favor, which motion was granted by the court. To this ruling of the court defendant, by his counsel, then and there duly excepted.

The jury thereupon, as directed by the court, found a verdict for the plaintiffs.

And forasmuch as the exception, matters, and things aforesaid would not otherwise appear by the record, the court has settled and allowed this bill of exceptions, and it is ordered that the same be filed as a part of the record of this case, with like force and effect as if it had been reduced to writing, settled, signed, and filed before the cause was given to the jury.

Witness my hand at the city of New York this 17th day of March, 1884.

ALFRED C. COXE. [L. S.]

(Endorsed) N. S. 2887. U. S. circuit court, southern district of New York. Fredk. Vietor & another versus Chester A. Arthur. Sir: This is defts. proposed bill of exceptions herein. Yrs., &c., Elihu Root, U. S. atty. for deft. Elihu Root, United States attorney, attorney for defendant—Correct, Elihu Root, atty. for deft. S. G. Clarke, of counsel for H. J. Begley, atty. U. S. circuit court. Filed May 5, 1884, Timothy Griffith, clerk.

31 Supreme Court of the United States.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR, *vs.* FREDERICK VIETOR, GEORGE F. VIETOR, Carl Vietor, Thomas Vietor, jr., & Fritz Achelis, defendants in error.	U. S. 2887. Assignment of error.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said Court, at the Capitol in Washington, comes the said plaintiff in error, by Elihu Root, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

That by the record aforesaid it appears that the judgment aforesaid,
32 in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

ELIHU ROOT,
Attorney for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, vs. Frederick Vietor & al., defendants in error. Assignment of error,
33 Elihu Root, United States attorney, attorney for plaintiff in error. Due service of a copy of the within is hereby admitted. New York, June 17, 1885. H. J. Begley, attorney for defendants in error. U. S. circuit court. Filed June 22, 1885. Timothy Griffith, clerk.

34 Supreme Court of the United States.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
against
FREDERICK VIETOR, GEORGE F. VIETOR, CARL Vietor, Thomas Vietor, jr., & Fritz Achelis, defendants in error.

No. 2887. Joinder in error.

And afterwards, to wit, on the second Monday of October next, in said court, the defendants in error, by Stephen G. Clarke, esq., their attorney, come into Court and say that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And they pray that this Court, before the justices thereof, may
35 proceed to examine as well the record and proceedings aforesaid as the matter above assigned for error, and that the judgment aforesaid, in form aforesaid, may in all things be affirmed.

STEPHEN G. CLARKE,
Attorney for Defendants in Error.

(Endorsed:) U. S. Supreme Court. Chester A. Arthur, pl'ff in error, vs. Frederick Vietor & al., defts. in error. Joinder in error. Stephen G. Clarke, att'y for def'ts in error, 180 B'dway, N. Y. City. Elihu Root, att'y for pl'ff in error. U. S. circuit court. Filed June 24, 1885. Timothy Griffith, clerk.

36 UNITED STATES OF AMERICA, *ss:*

To Frederick Vietor, George F. Vietor, Carl Vietor, Thomas Vietor, jr., & Fritz Achelis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and eighty-five, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur, plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated June 16th, 1885.

HOYT H. WHEELER.

37 (Indorsed:) 2887. U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Frederick Vietor & al., defendants in error. Citation. Elihu Root, attorney for pl'ff in error. Due service of a copy of the within citation is hereby admitted this 17 day of June, 1885. H. J. Begley, attorney for defendants in error.

(Stamped:) U. S. circuit court, Jun. 22, 1885. Timothy Griffith, clerk.

(Indorsement on cover:) No. 268. Chester A. Arthur, late collector of the port of New York, plaintiff in error, vs. Frederick Vietor, George F. Vietor, Carl Vietor, Thomas Vietor, jr., and Fritz Achelis. S. New York, C. C. U. S. Filed August 7, 1885.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

CHARLES E. MILLER AND DANIEL G. ROLLINS, executors of Chester A. Arthur, late collector of the port of New York, plaintiffs in error,
vs.
FREDERICK VIETOR, GEORGE F. Vietor, Carl Vietor, Thomas Vietor, jr., and Fritz Achelis.
} No. 268.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFFS IN ERROR.

34 Supreme Court of the United States.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
against
FREDERICK VIETOR, GEORGE F. VIETOR, CARL VIETOR, THOMAS VIETOR, jr., & FRITZ ACHELIS, defendants in error.

No. 2887. Joinder in error.

And afterwards, to wit, on the second Monday of October next, in said court, the defendants in error, by Stephen G. Clarke, esq., their attorney, come into Court and say that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And they pray that this Court, before the justices thereof, may
35 proceed to examine as well the record and proceedings aforesaid as the matter above assigned for error, and that the judgment aforesaid, in form aforesaid, may in all things be affirmed.

STEPHEN G. CLARKE,
Attorney for Defendants in Error.

(Endorsed:) U. S. Supreme Court. Chester A. Arthur, pl'ff in error, vs. Frederick Vietor & al., defts. in error. Joinder in error. Stephen G. Clarke, att'y for def'ts in error, 180 B'dway, N. Y. City. Elihu Root, att'y for pl'ff in error. U. S. circuit court. Filed June 24, 1885. Timothy Griffith, clerk.

36 UNITED STATES OF AMERICA, *ss:*

To Frederick Vietor, George F. Vietor, Carl Vietor, Thomas Vietor, jr., & Fritz Achelis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and eighty-five, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur, plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated June 16th, 1885.

HOYT H. WHEELER.

37 (Indorsed:) 2887. U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Frederick Vietor & al., defendants in error. Citation. Elihu Root, attorney for pl'ff in error. Due service of a copy of the within citation is hereby admitted this 17 day of June, 1885. H. J. Begley, attorney for defendants in error.

(Stamped:) U. S. circuit court, Jun. 22, 1885. Timothy Griffith, clerk.

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In the Supreme Court of the United States.

OCTOBER TERM, 1887.

CHARLES E. MILLER AND DANIEL G. ROLLINS, executors of Chester A. Arthur, late collector of the port of New York, plaintiffs in error, *vs.* FREDERICK VIETOR, GEORGE F. Vietor, Carl Vietor, Thomas Vietor, jr., and Fritz Achelis.	No. 268.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFFS IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

CHARLES E. MILLER AND DANIEL G. ROLLINS, executors of Chester A. Arthur, late collector of the port of New York, plaintiffs in error, *vs.* FREDERICK VIETOR, GEORGE F. Vietor, Carl Vietor, Thomas Vietor, jr., and Fritz Achelis.	No. 268.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

The plaintiffs in the circuit court, between April and November, 1873, made several importations of hosiery, composed of wool or worsted and cotton, at the port of

New York, on which the collector assessed and collected duties at the rate of 35 per centum ad valorem and 50 cents a pound, less a deduction of 10 per centum. The plaintiffs protested in due time—

> Because said merchandise, being merino hosiery, and similar articles made on frames, not otherwise provided for, is only liable to duty under the 22nd section of the tariff act of March 2, 1861, and the 13th section of the tariff act of July 16th, 1862, at the rate of 35 per centum ad valorem, less 10 per cent. under the 2nd section of the act of June 6th, 1862, as manufactures wholly or in part of wool or hair of the alpaca, goat or other like animal.

In this action they claim the merchandise should have been classified and taxed in accordance with their protest. The merchandise was stockings that were worn by men, women, and children, and were made on frames. They, and all other fabrics composed of a single thread united in a series of loops, made on frames, are knit goods. There are also knit goods that are not made on frames. The result is the same whether made on frames or not. The case was tried by a jury. The court adopted the view of the plaintiffs, and directed a verdict to be rendered in their favor, which, by consent, was adjusted at the custom-house, and judgment was entered thereon in favor of the plaintiffs for $1,897.96.

ASSIGNMENT OF ERROR.

The court erred in directing a verdict, under the facts set forth in the bill of exceptions, in favor of the plaintiffs, and entering judgment thereon against the defendant.

BRIEF OF ARGUMENT.

I.

The plaintiffs claimed, and the court ruled, the merchandise should have been taxed 30 per centum ad valorem under the following paragraph of the twenty-second section of the act of the 2d of March, 1861 (12 U. S. Stats., 191):

> Caps, gloves, leggings, mits, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, worn by men, women, or children, *and not otherwise provided for*,

with 5 per cent. added thereto under the thirteenth section of the act of the 14th of July, 1862 (12 U. S. Stats., 555 and 556), which provides:

> That from the day and year aforesaid, in addition to the duties heretofore imposed by law on the articles hereinafter mentioned, there shall be levied, collected, and paid on the goods, wares, and merchandise enumerated and provided for in this section, imported from foreign countries, a duty of five per centum ad valorem, that is to say—* * *
>
> Caps, gloves, leggings, mits, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, worn by men, women, and children, *not otherwise provided for*.

This addition to the 30 per cent. provided for in the former quotation made in all 35 per centum ad valorem, which was the amount the plaintiffs claimed should have been levied on this merchandise. The collector levied the

tax under the following paragraph of the second section of the act of the 2d of March, 1867 (14 U. S. Stats., 561):

> On woolen cloths, woolen shawls, and all manufactures of wool of every description, made wholly or in part of wool not *herein* otherwise provided for, fifty cents per pound, and, in addition thereto, thirty-five per centum ad valorem.
>
> On flannels, blankets, hats of wool, knit-goods, balmorals, woolen and worsted yarn, and all manufactures of every description, composed wholly or in part of worsted, the hair of the alpaca, goat, or other like animal, *except such as are composed in part of wool* not otherwise provided for, valued at not exceeding forty cents per pound, twenty cents per pound; valued at above forty cents per pound and not exceeding sixty cents per pound, thirty cents per pound; valued at above sixty cents per pound and not exceeding eighty cents per pound, forty cents per pound; valued at above eighty cents per pound, fifty cents per pound; and, in addition thereto, upon all the above-named articles, thirty-five per centum ad valorem.

The question in the case is, Should the merchandise have been taxed according to the classification and rate set forth in the protest of the plaintiffs under the paragraph first quoted? To convict the court below of error, it is not necessary to establish that the assessment by the collector was right, but only that the claim of the plaintiffs, as they made it to the collector, was wrong, for, as was ruled in *Davis* vs. *Arthur* (96 U. S. R., 149)—

> Persons importing merchandise are required to make their protest distinct and specific, in order to apprise the collector of the nature of the objection

> before it is too late to remove it, or to modify the exaction, and that the proper officers of the Treasury may know what they have to meet in case they decide to exact the duties as estimated, notwithstanding the objection, and to expose the United States to the risk of litigation (*Curtis, administratrix* vs. *Fiedler;* 2 Black. 461).

These importations were made before the revision of the statutes. The original statutes, then, with all their unrepealed provisions, are to be the guide in the determination of this case. This suggestion is made here to guard against the possible effect of the decision of this court in *Vietor* vs. *Arthur* (104 U. S. R., 498), which was a case in which the goods were imported after the revision of the statutes, and, as will be explained hereafter, stands upon different ground from this case. The goods involved in this controversy are "hosiery," composed "in part of wool" (Rec., p. 10). Hosiery composed partly of wool is provided for in the second article of section 13 of the act of March 2, 1861, in a paragraph which precedes in the act the paragraph under which plaintiffs' protest claimed to classify the merchandise, which is as follows (12 U. S. Stats., 184):

> On clothing, ready-made, and wearing apparel of every description, composed wholly or in part of wool, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer, twelve cents per pound, and in addition thereto twenty-five per centum ad valorem.

That "hosiery" is one description of "wearing apparel" is not susceptible of dispute. The clause last quoted includes "every description" of wearing apparel

composed "wholly or in part of wool." The hosiery in this case was composed in part of wool; therefore it was provided for before the enactment of the clause called for in the plaintiffs' protest, which expressly excepted articles otherwise provided for. It therefore excepted this hosiery.

The fact that the clause under which the plaintiffs claim does specifically provide for hosiery under the name of "socks" and "stockings" does not warrant the classification of this hosiery under that clause, for it comes under the exception "not otherwise provided for." Much hosiery is made of cotton, silk, linen, and other materials. There is therefore ample scope left to give full effect to the provisions of the clause under which the plaintiffs claim, and both clauses of the act may stand together.

That this construction is the true one is shown by the fact that on the 5th day of August, 1861, Congress amended the clause of the act of the 2d of March, 1861, relating to ready-made clothing and wearing apparel, and under which it is claimed in pursuance of that act this merchandise should have been classified (referring to which it is enacted) as follows:

> The same is hereby amended as follows: * * * Section thirteen, article second, after the word "manufacturer," insert "except hosiery."

Until the act of the 2d of March was thus amended, the clause "wearing apparel of every description composed wholly or in part of wool" embraced hosiery. After the amendment it did not. It is thus shown it was not the intent of Congress at the time of the passage of the act of the 2d of March, 1861, to include hosiery composed

partly of wool in the clause contended for by the plaintiffs. The amendment, by excepting it from the one clause, did not incorporate it in the other, for the clause the plaintiffs contend for was not amended, but remained the same after the act of the 5th of August as it was before.

The act of the 14th of July, 1862, referred to in the plaintiffs' protest as above set forth, only added 5 per cent. to the several articles contained in the act of 1861, in addition to that which had been before imposed thereon. This act does not change any classification made by the act of 1861. The hosiery now in dispute, therefore, was not, prior to the enactment of the Revised Statutes, entitled to be classified as claimed in the plaintiffs' protest.

II.

The act of the 30th of June, 1864, fully sustains the view above stated. It re-enacts the wearing-apparel clause of the act of 1861 above referred to, and, by excepting hosiery, recognizes that hosiery was included in the terms of the enactment prior to the excepting clause, when made wholly or in part of wool. The clause in the act of 1864 is as follows (13 U. S. Stats., 207):

> On clothing ready-made and wearing apparel, of every description, composed wholly or in part of wool, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, *except hosiery*, twenty-four cents per pound, and, in addition thereto, forty per centum ad valorem.

The hosiery excepted in this clause, when made wholly

or in part of wool, is thus provided for in a later paragraph of the act of 1864 (13 U. S. Stats., 208), as follows:

> On shirts, drawers and hosiery, of wool, or of which wool shall be a component material not otherwise provided for, twenty cents per pound, and, in addition thereto, thirty per centum ad valorem.

Thus hosiery, made wholly or in part of wool, is by name and unmistakable description provided for in the act of 1864, and the claim of the plaintiffs that the acts of 1861 and 1862 should be resurrected and made the ground for the classification claimed by them, as set forth in their protest, is erroneous.

III.

The second section of the act of the 2d of March, 1867, was clearly intended to be a full and complete revision and consolidation of the subjects included in it. Its main object was a revision of the duties on merchandise composed wholly or in part of wool. That act (14 U. S. Stats., 561) provides:

> On clothing, ready-made, and wearing apparel of every description, balmoral skirts and skirting, and goods of similar description, or used for like purposes, composed wholly or in part of wool, worsted, the hair of the alpaca, goat or other like animal, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, except knit goods, fifty cents per pound, and, in addition thereto, forty per centum ad valorem.

Also—

> All manufactures of wool of every description, made wholly or in part of wool, not *herein* otherwise

provided for, fifty cents per pound, and, in addition thereto, thirty-five per centum ad valorem.

On flannels, blankets, hats of wool, *knit-goods*, balmorals, woolen and worsted yarns, and all manufactures of every description, composed wholly or in part of worsted, the hair of the alpaca, goat or other like animal, except such as are composed in part of wool not otherwise provided for, valued at * * * above eighty cents per pound, fifty cents per pound, and, in addition thereto, upon all the above-named articles, thirty-five per centum ad valorem.

It thus appears that the act of 1867 reproduces the language of the act of 1861, without the exception of hosiery that was incorporated into it by the act of 1862, which exception was also carried into the act of 1864 above cited. The act of 1867 also omits the clause of the act of 1864, that provides for hosiery by name. This omission of the exception of hosiery, and the omission of the provision made for it in the act 1864, leaves the inference inevitable that by omitting the exception of hosiery composed wholly or in part of wool in the wearing-apparel clause, it was intended to embrace hosiery therein. The act of 1867 also, for the first time, introduces the language "knit-goods," and omits entirely the clause under which plaintiffs claim.

In the case of *Maillard* vs. *Lawrence* (16 How., 256) this wearing-apparel clause, which was found in the act of 1846, was construed to embrace every article that belonged to wearing apparel without regard to the process of manufacture. Under this clause of the act of 1867, above cited, the merchandise involved in this case, composed wholly or in part of wool, should have been classi-

fied, and such part of it as was composed wholly or in part of worsted should have been classified as "knit-goods," as the collector did classify all of the goods.

IV.

The law as established by the act of 1867 was changed by the revision of the statutes. Section 2504, schedule M, page 474, provides:

> On clothing ready-made, and wearing apparel of every description, of whatever material composed, *except wool, silk and linen*, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, not otherwise provided for, caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, and all similar articles made in frames, of whatever material composed, except silk and linen, worn by men, women or children, and not otherwise provided for, articles worn by men, women and children, of whatever material composed, except silk and linen, made wholly or in part by hand, of whatever material composed, thirty-five per centum ad valorem.

In this it will be observed that wool, silk, and linen are excepted from the wearing-apparel clause; which was not done in the act of 1867, but such apparel composed wholly or in part of wool was included therein. It will also be observed that in the latter part of the clause which provides for "mitts, socks, stockings," etc., when composed of silk and linen, they are still excepted, while wool is not excepted, and is therefore included in the latter part of the clause in the revision.

It will also be noted that the clause quoted enacts in its

latter part the clause with reference to "mitts, socks, stockings," etc., made on frames, in language similar to that of the act of 1861, which had been excluded from the acts of 1864 and 1867 in consequence of the fact that the same articles had been otherwise provided for in those acts. In consequence of these changes wrought by the revision, Chief-Justice Waite, in an opinion rendered in *Vietor* vs. *Arthur* (104 U. S., 500), declares, in substance, that prior acts had not been considered and examined in that case, and suggests that if the case had required a construction of the law as it existed prior to the revision a different conclusion might have been reached. His language is:

> It may be true as suggested that if there had been no revision, and we had been required to construe the statutes as they stood before December 1st, 1873, a different conclusion might have been reached. We have not deemed it necessary to institute such an inquiry, for it would be contrary to all the rules of construction to say that where in one part of the section it was provided that stockings made on frames, of whatever material composed, except silk and linen, should pay duties at a certain rate, it was not *plain* such articles were not in any just sense otherwise provided for in a preceding clause of the same section fixing the duties to be paid on knit goods composed wholly or in part of worsted.

It should be borne in mind the goods involved in this case were imported before the revision, and the cause must be decided on the law as it existed in 1867.

G. A. JENKS,
Solicitor-General.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1887.

No. 268.

CHESTER A. ARTHUR, late Collector of the Port of New York,
Plaintiff in Error,

vs.

FREDERICK VIETOR, GEORGE F. VIETOR, THOMAS VIETOR, Jr., and FRITZ ACHELIS,
Defendants in Error.

DEFENDANTS' BRIEF.

STEPHEN G. CLARKE,
Of Counsel for Defendants in Error.

BURGOYNE QUICK PRINTING CO., COR. WALKER AND CENTRE STS.

Supreme Court of the United States.

CHESTER A. ARTHUR, late Collector of the Port of New York,
Plaintiff in Error,

vs.

FREDERICK VIETOR, GEORGE F. VIETOR, THOMAS VIETOR, JR., and FRITZ ACHELIS,
Defendants in Error.

No. 268.
Oct. Term, 1887.

BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

Statement.

The defendants in error, merchants in New York, imported at that port, in the year 1873, hosiery, upon which the plaintiff in error, the Collector of Customs at that Port, assessed duty at the rate of fifty cents per pound and thirty-five per cent. *ad valorem*, which rate of duty the defendants in error paid under protest, the grounds of which they stated as follows:

"Because said merchandise, being merino hosiery, and similar articles made on frames, not otherwise provided for, is only liable to duty under the 22d section

of the Tariff Act of March 2d, 1861, and the 13th section of the Tariff Act of July 16th, 1862, at the rate of 35 per centum *ad valorem*, less 10 per cent. under the 2d section of the Act of June 6th, 1872, as manufactures wholly or in part of wool or hair of the alpaca goat or other like animal."

Appeal was duly made and suit was properly brought.

Upon the trial it appeared that the articles in question were stockings worn by men, women and children, and that they were made on frames, and that they contained from ten to twenty per cent. of wool or worsted, the other component material being cotton.

Plaintiff here, defendant below, offered evidence tending to show that all fabrics made on frames are knit goods.

The defendants here, the importers, introduced evidence, which was uncontradicted, tending to show that the term "knit goods," used in trade and commerce, has no different or other meaning than its meaning among men in general; that there are knit goods known in trade and commerce which were not made on frames, but which were made by hand, and that there are other goods, as caps, gloves, leggings, mitts, socks, stockings and drawers, made in whole or in part of wool or worsted, worn by men, women and children, which are made on a frame and knit, and which are also knit by hand; that while the result of knitting by hand and of the manufacture on a frame of a fabric consisting of a single thread is the production of a textile fabric composed of a series of connecting loops which are alike in each case, yet the processes by which they are produced are dissimilar; that the result of the process of manufacturing upon frames and knitting by hand is the same, although the two processes are dissimilar; also that there are no textile fabrics made on frames which are known in trade and commerce except fabrics composed of cotton, wool or

worsted, silk, linen or a mixture of these materials (see Record, p. 10).

Thereupon the Court directed a verdict in favor of the original plaintiffs, and it is to review such direction that the defendant below has brought this writ of error.

ARGUMENT.

The Act of March 2, 1861, 12th Stat. at L., 178, Section 22, p. 190, provides as follows:

"Caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, worn by men, women or children, and not otherwise provided for."

And the Act of July 14, 1862, 12th Stat. at L., 543, Section 13, page 555, imposed five per cent. additional duty, repeating in the same words the enumeration of the Act of 1861.

These provisions were not new to the statutes. I quote from the Acts of 1842 and 1846:

"On woolens and worsted mitts, gloves, caps and bindings, and on woolen and worsted hosiery, that is to say, stockings, socks, drawers, shirts, and all other similar manufactures made on frames."

Act of Aug. 30, 1842, 5th Stat. at L., 549.

"Caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, worn by men, women or children, and not otherwise provided for."

Act of July 30, 1846, 9th Stat. at L., 44.

Later statutes are in entire harmony with the position taken by the defendants in error.

The Revised Statutes contains this provision:

"Clothing, ready made, and wearing apparel of every description, of whatever material composed, except wool, silk and linen, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer,

not otherwise provided for, caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, except silk and linen, worn by men, women or children, and not otherwise provided for, articles worn by men, women or children, of whatever material composed, except silk and linen, made up, or made wholly or in part by hand, not otherwise provided for; thirty-five per centum *ad valorem.*"

U. S. Rev. Stat., Sec. 2504, Schedule M, p. 474; near bottom.

The plaintiff in error upon the trial below claimed that the provisions of the 2d section of the Act of March 2, 1867 (14 Statutes at L., p. 559), which provided among other things for flannels, blankets, hats of wool, knit goods, balmorals, woolen and worsted yarns and all manufactures of every description composed wholly or in part of worsted, &c., except such as are composed in part of wool, at the rate of duty assessed, was controlling.

The question as presented under the Revised Statutes was before this Court and very thoroughly argued in behalf of the Government in the case of Vietor vs. Arthur, reported in 104 U. S., 498. In that case the Court held that "stockings, &c., made on frames" is a specific enumeration. This being so, under well-settled rules of construction, the general words of the Act of 1867, even were they applicable to these goods, would not operate to change the rate of duty affixed to them by an enumeration *eo nomine.*

The particular enumeration must prevail and this is particularly so when Congress has for a long term of years given to an article a distinct and separate existence by specific enumeration separate and apart from a large classification to which it might otherwise belong.

As we have seen, such distinctive enumeration has existed in this case since 1842.

"When Congress has designated an article by a

specific name, and by such name imposed a duty upon it, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to cover such article, are not applicable to it."

Arthur vs. Lahey, 96 U. S., 113, 118.

"When Congress, in legislating on the subject of duties, has described an article so as to identify it by a given designation for revenue purposes, and this has been so long continued as to impress on it a particular designation as an article of import, then it must be treated as a distinct article, whether there be evidence that it is so known in commerce or not. It must be taken as thus known in the sense of the revenue laws, by reason of the legal designation given to it, and by which it has been known and practiced on at the Custom House."

De Forest vs. Lawrence, 13 How., 274, 282.

The construction contended for is in harmony with the decided cases. See:

Homer vs. The Collector, 1 Wall., 486.
Reiche vs. Smythe, 13 Wall., 162.
Movius vs. Arthur, 95 U. S., 144.
Bend vs. Hoyt, 13 Pet., 263.
U. S. vs. Ullman, 4 Ben., 547.
Arthur vs. Morrison, 96 U. S., 108.
Arthur vs. Lahey, 96 U. S., 112.
Arthur vs. Unkart, 96 U. S., 119.
Arthur vs. Zimmerman, 96 U. S., 124.
Arthur vs. Stephani, 96 U. S., 125.
Arthur vs. Davies, 96 U. S., 135.
Arthur vs. Rheims, 96 U. S., 143.
De Forest vs. Lawrence, 13 How., 274.

So in Arthur vs. Davies the Court say, 96 U. S., 136:

"It thus appears that for thirty years prior to this importation, and in four different statutes, braces and suspenders composed wholly or in part of india-rubber had been a subject of duty *eo nomine;* and in the same statute, where a duty of fifty per cent is imposed on

not otherwise provided for, caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, except silk and linen, worn by men, women or children, and not otherwise provided for, articles worn by men, women or children, of whatever material composed, except silk and linen, made up, or made wholly or in part by hand, not otherwise provided for; thirty-five per centum *ad valorem*."

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other manufactures, of which rubber is a component material, which it is now sought to apply to braces and suspenders, braces and suspenders containing that material are, by name, charged with an additional duty of five per cent.

"It is not material that in one kind of suspenders cotton was the component of chief value, and that each contained some proportion of silk. If they are technically and commercially braces and suspenders, composed in part of india-rubber, they take their dutiable character from that source and not from the fact that they would otherwise fall under the general designation applicable to other subjects."

It is contended that the term "knit goods" found in the statutes for the first time in 1867 being broad enough to cover plaintiff's importations, must be held to cover them. I submit that this contention, in view of the general rules of construction, is not tenable.

Besides Tariff Acts are one system, and are to be construed together.

Mr. Justice BRADLEY, delivering the opinion of the Court in Solomon vs. Arthur, 102 U. S., 212, said:

"It is observable that the description of 'manufactures made of mixed materials, in part of cotton, silk,' &c., is more general than that of 'manufactures of which silk is the component part of chief value.' Logically, the two phrases standing together in the same act or system of laws would be related as follows: 'Goods made of mixed materials, cotton, silk, &c., shall pay a duty of thirty-five per cent.; *but if* silk is the component part of chief value, they shall pay a duty of fifty per cent.'"

Paraphrasing this decision and applying it to the present case harmonizes the Acts of 1861, 1862 and 1867 and gives full effect to their provisions in entire harmony with the decided cases.

The record shows that the term "knit goods" has no special signification in trade and commerce, and that

there are many knit goods of various materials that are not made on frames.

Therefore, we say logically, the statutes should be construed and read, standing, as they do, in the same system of laws, "knit goods shall pay a duty of fifty cents a pound and thirty-five per cent. *ad valorem*, but if they are stockings made on frames and if worn by men, women and children they shall pay thirty-five per cent. *ad valorem*."

The whole case lies within this narrow compass, and no amplification of argument seems to us needed to make it clearer; we quote, however, from the opinion of the Judge in the Court below, which will be found reported in 19 Federal Reporter, page 251:

"Here, then, is a general and long recognized rule of statutory construction applicable to the law as it existed both before and after the revision, as applicable to the case at bar as to the case the Supreme Court were considering. Tested by it the position of the plaintiffs seems well taken. They imported 'stockings made on frames worn by men, women and children.' It would be difficult to employ language more correctly describing the articles—the duty being imposed without reference to the material. But it is asserted that the general language of the Act of 1867, viz., 'manufactures of wool of every description' and 'knit goods * * * composed wholly or in part of worsted' repealed the provisions quoted from the Act of 1862. That it does not do this expressly is admitted, but it is argued that it operates as a repeal by implication.

"The Act of 1867 was, to use the language of defendant's brief, 'intended to be a complete and exhaustive revision of the tariff so far as it related to wool and articles containing wool.' It certainly was very comprehensive, specific and minute in its classifications. That in such an act, where 'buttons,' 'head-nets,' and 'hats of wool' were not forgotton, no mention should have been made of 'stockings made on frames' or the acts which for many years imposed a duty upon them by that name, is indeed significant. Within the rule just quoted from the Supreme Court the specific de-

scription in the Act of 1862 was not affected by the general description in the Act of 1867. When the collector turned to the former act he found precisely what the law requires him to search for in the first instance—a particular description of the imported articles. There was no need to examine further. His duty was done."

It is settled that under the Revised Statutes the rate of duty contended for by the importers is the correct rate. It necessarily follows that such was the rate before.

It is true the Revised Statutes are one act, but the revenue laws prior to the revision constitute but one system of laws and are to be construed together.

Therefore, the argument based upon the revision is equally applicable to the laws in force prior to the revision, and which laws the revision was intended to re-enact.

The Supreme Court in Smythe vs. Fiske, 23 Wall, 382, quote a provision of the Revised Statutes, containing the exception of silk and linen, as necessarily a construction of the silk clause of the Act of 1864, and a legislative declaration that such was the law on the 1st day of December, 1873. With equal force when, in the Revised Statutes, we find the exception of silk and linen in respect to goods made on frames, and we do not find wool and worsted in such exception, must it be concluded that on that day existing laws did not contain such exception and that the provision for goods made on frames in the then statutes included those of wool and worsted.

To exclude these goods from such provisions would leave nothing for the statute to operate upon.

The Act of 1864, Section 6, imposes a duty of 35 per cent. duty on all cotton hosiery.

Silk and linen have been excepted. As the record finds that there are no textile fabrics made on frames known in commerce, except those of cotton, wool or worsted, silk, linen or a mixture of these, it follows that

unless this provision is applied to stockings like the plaintiffs, it can be applied to nothing.

Prior to Act of 1867, knit goods *not* made on frames would have been, if not otherwise enumerated dutiable by similitude to knit goods made on frames. The exception then, of knit goods in the worsted section clearly left, as I have before argued, the specific particular description of some knit goods, viz.: "Stockings, &c., made on frames," to have effect.

It is also to be noted that the Acts of 1861 and '2, both contained the general provisions for manufactures of wool as well as the more particular enumeration by specific name and mode of manufacture of stockings, &c., made on frames, &c.

STEPHEN G. CLARKE,
Of Counsel for Defendants in Error.

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2-7-5 72.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1887.

No. 268.

CHARLES E. MILLER and DANIEL G. ROLLINS, Executors of CHESTER A. ARTHUR, late Collector of the Port of New York,

Plaintiffs in Error,

vs.

FREDERICK VIETOR, GEORGE F. VIETOR, CARL VIETOR, THOMAS VIETOR, Jr., and FRITZ ACHELIS,

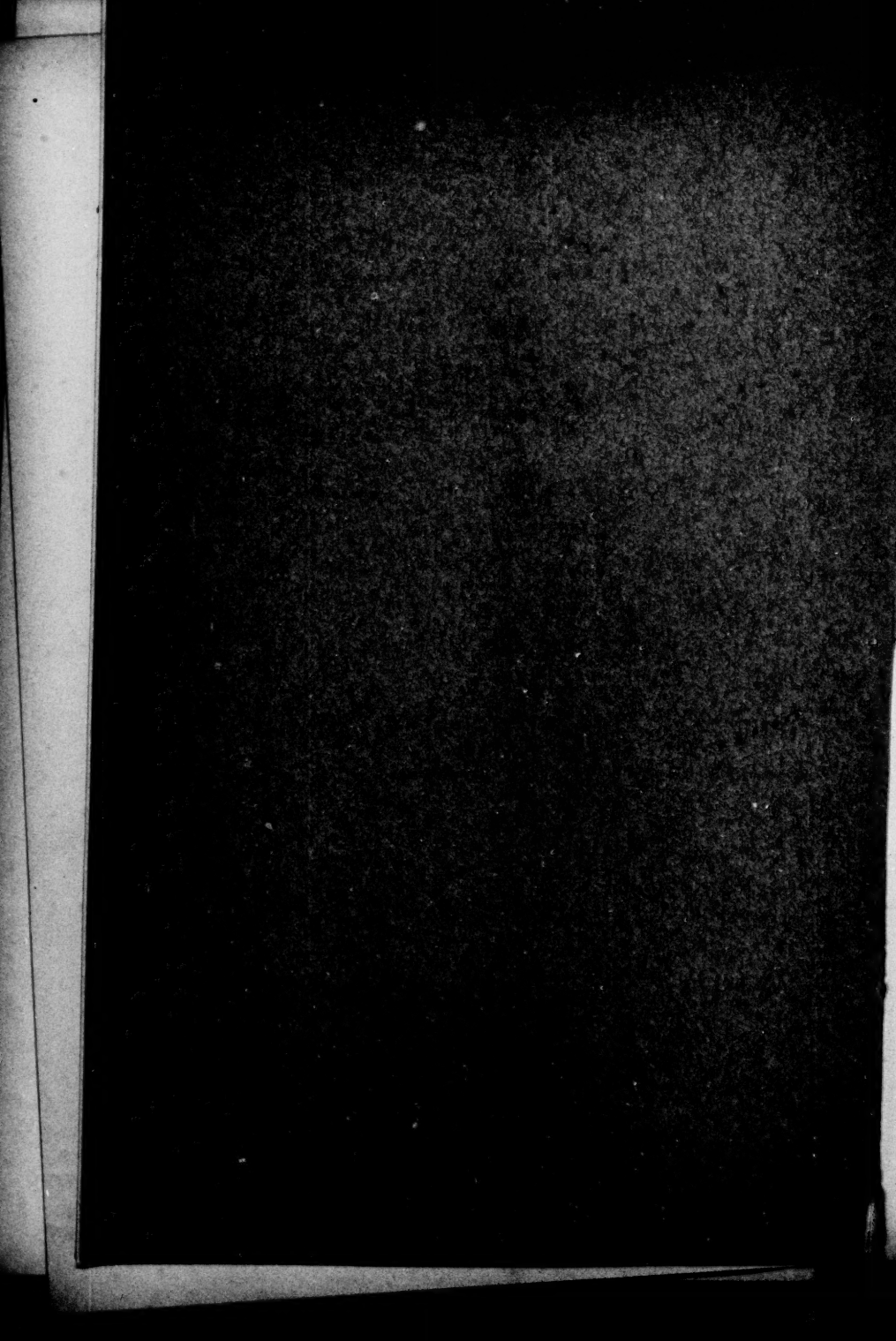
Defendants in Error.

ADDITIONAL BRIEF FOR DEFENDANTS.

STEPHEN G. CLARKE,

Of Counsel for Defendants in Error.

BURGOYNE QUICK PRINTING CO., COR. WALKER AND CENTRE STS.



Supreme Court of the United States.

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Defendants in Error.

No. 268.
Oct. Term, 1887.

Additional Brief in behalf of the Defendants in Error.

The brief of the Solicitor-General not having been filed until my own sustaining the original claim of the defendants had been prepared, I submit this supplemental brief in reply to the position now taken by the Government.

I.

The contention on behalf of the plaintiff in error is, if I rightly apprehend it, that the stockings in question

being wearing apparel, were, under the Act of 1861, thus dutiable, and that the provisions of that act under which the importers claim did not apply.

It is apparently conceded that if prior to the passage of the Act of 1867 the goods in question were *eo nomine* dutiable as stockings made on frames, that then the Act of 1867 did not affect their dutiable category, and the contention of the importers must prevail.

The Act of 1846, 9 Stat. at L., 44, provided, as we have already seen, for

"Caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, and all similar articles made on frames, worn by men, women or children, and not otherwise provided for."

It also provided for

"Clothing, ready made, and wearing apparel of every description, of whatever material composed, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer."

Id., p. 45, near top.

It further provided for

"Caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton, worn by men, women and children."

Id., p. 46, bottom.

The "not otherwise provided for" of the first paragraph above quoted has clear relation to the last paragraph, and was not intended and did not have the effect to leave any chance for the wearing apparel provision of the second clause to apply to the *named* articles of wearing apparel, such as stockings, &c.

The Act of 1842 also provided:

"SEVENTH. On woolen and worsted mits, gloves, caps and bindings, and on woolen or worsted hosiery, that is

to say, stockings, socks, drawers, shirts and all other similar manufactures made on frames."

5 Stat. at L., 549.

And also

"NINTH. On ready-made clothing, of whatever materials composed, worn by men, women or children, except gloves, mits, stockings, socks, wove shirts and drawers and all other similar manufactures made on frames" *(Ib.)*

I submit, then, that as the law stood in 1861 a class of goods enumerated by name and as made on frames were dutiable by that description. That it was also part of their dutiable description that they were also wearing apparel, *i. e.*, the schedule says they are made on frames, and, "*worn by men, women or children.*"

"Wearing apparel" by that descriptive enumeration was also dutiable. Therefore, wearing apparel *made on frames* was a class by itself separate and distinct from the general class of wearing apparel.

Just as separate and distinct as worsted is from wool for tariff purposes.

Elliott vs. Swartwout, 10 Pet., 137.

Or almonds from fruit.

Homer vs. Collecter, 1 Wall., 486.

Or birds from all living animals.

Reiche vs. Smythe, 13 Wall., 162.

"Braids used for making and ornamenting hats," were held to be thus excepted out of the general provision for "cotton braids."

Arthur vs. Zimmerman, 96 U. S., 124.

The case is as strong as that of Arthur vs. Stephani, 96 U. S., 125, where a chocolate prepared for and sold as a confectionery was still held dutiable as chocolate.

The Court say, p. 127:

"Contemporaneously and side by side, all the way

down, the statutes provide for different rates of duty on the varieties of sugar and on confectionery, as well as on chocolate. Confectionery and chocolate are uniformly recognized as being different articles for the purpose of duties."

So here Congress has recognized "stockings made on frames," and "wearing apparel" as being different articles for the purpose of duties.

The contention of the Solicitor-General is that as the Act of 1861, quoted in his brief, provided for wearing apparel of wool, and as this provision preceded in the statute the one under which the importers claim, and as that contained the provision "not otherwise provided for," therefore, stockings of wool, made on frames, in that act were at all events dutiable as wearing apparel.

He further argues:

"Much hosiery is made of cotton, silk, linen, and other materials. There is, therefore, ample scope left to give full effect to the provisions of the clause under which the plaintiffs claim, and both clauses of the act may stand together."

A reading of the whole statute leads to a different conclusion. I quote two additional paragraphs from section twenty-one:

"Articles worn by men, women or children, of whatever material composed, made up, or made wholly or in part by hand, not otherwise provided for."

12 Stat. at L., p. 191, near top.

"Clothing, ready-made, and wearing apparel of every description, *of whatever material composed*, except wool, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer."

Ib., p. 191, middle.

In view particularly of this last provision, what has become of the "ample scope" which will give full effect to all these provisions?

I take issue on the proposition that the amendment of the Act of March 2d by the Act of August 5th, 1861, aids the Solicitor-General in his construction. An examination of the amendments in the 6th section of the latter act show that the intent was simply to correct manifest errors and remove ambiguities.

But whatever may have been intended by Congress it is clear that after August 5th, 1861, the amendment was in the original act, and when the Act of 1862 was passed, stockings of wool made on frames were either dutiable at 30 per cent. under the enumeration claimed by the importer, or the amendment of August 5th, had left them, like Mahomet's coffin, in mid-air.

I ask, on the Solicitor-General's own argument, how were stockings of wool made on frames dutiable after the amendment of August 5th ?

I can conceive of no answer that does not carry the argument of the Government to a *reductio ad absurdum*, or does not concede my claim.

In this connection I ask the Court to consider the clause of the Act of 1862, which provides—Section 13 :

" From and after the day and year aforesaid, in addition to the duties heretofore imposed by law on the articles hereinafter mentioned, there shall be levied, collected, and paid, on the goods, wares, and merchandise enumerated and provided for in this section, imported from foreign countries, a duty of 5 per centum *ad valorem*, that is to say : " 12 Stat. at L., 555.

I submit that this provision of itself imposed five per centum duty. To what was it added in the case of

" Caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, worn by men, women and children."

Was it added to duty on wearing apparel? I submit not, for then the addition on this sort of wearing

apparel would have been 10 per cent., for wearing apparel by this very section is increased also 5 per cent.

But the wearing apparel question has already practically been disposed of in this Court.

"The articles in question did not come within the general terms of the eighth section of the Act of 1864, for these reasons: 1st. They were not silk gloves, by reason of their component materials being composed of silk and cotton, the latter material preponderating; 2d. They were commercially known as 'plaited gloves' or 'patent gloves,' and not as silk gloves.

"They did not fall within the concluding clause, because silk was not the component of chief value. The facts here stated are founded upon the concessions of the parties at the trial and upon the verdict of the jury.

"Not being included in the Act of 1864, the articles are not dutiable under the Acts of 1861 and 1862, where they are enumerated as gloves made on frames, and by the Act of 1862, which adds five per cent. to the duty of 1861."

Arthur vs. Unkart, 96 U. S., 120.

II.

The contention of the Solicitor-General under the II. subdivision of his argument has already been answered by this Court in the former case of Vietor, 104 U. S., 498.

The term "hosiery" in the Act of 1864 is no more comprehensive or specific than the term "knit-goods" in the Revised Statutes, as opposed to *eo nomine* enumerations.

The same rule of construction must prevail.

I do not resurrect, nor do my clients resurrect, the Acts of 1861 and 1862. They were living and in force on the first day of December, 1873, or else they should

have found no place in the provisions of the Revised Statutes.

As this Court has said:

"The Revised Statutes must be treated as the legislative declaration of the statute law on the subject which they embrace on the first day of December, 1873."

U. S. vs. Bowen, 100 U. S., 513.

It seems unnecessary to cite further authority on this point.

III.

I am unable to ascertain from the third subdivision of the Solicitor-General's argument how he contends the articles in question were dutiable under the Act of 1867.

If, as wearing apparel, I fail to see the force of the second quotation or why "knit goods" should be italicized.

If, as "knit goods," then he departs from his first ground of argument, as bad a defect in logic as in pleading; surely a house divided against itself shall not stand.

I submit I have demonstrated that the goods in question are not dutiable as wearing apparel.

I submit further, this Court has demonstrated and decided that as between provisions for knit goods and the *eo nomine* provision I am contending for, that the latter prevails.

All the provisions of the Act of 1867 are repeated in the Revised Statutes. So are the provisions of the Acts of 1861–2 as to "stocking, &c., made on frames." In the case of Vietor, so often referred to, these con-

flicting provisions were passed upon by this Court and construed.

If your Honors then found no incompatibility, how, I ask, can the Act of 1867 be held to repeal, because incompatible by implication, these provisions in the Acts of 1861–2?

There is no express repeal.

We have, in addition, the declaration of the Revision cited *ante* under our II. head.

IV.

The Solicitor-General is compelled finally to the position that Congress in the revision did what it solemnly declared it did not intend to do, viz., change the law.

I only desire further to call attention to the fact that the Acts of 1864 and 1867 were not comprehensive tariff acts. They left existing laws in force, and only operated upon the articles therein enumerated.

V.

In conclusion, I submit the following propositions have been sustained, and that they are decisive:

1. Stockings made on frames have been dutiable *eo nomine* since 1842, and by four different enactments prior to the revision.

2. That the same statutes have contained provisions for wearing apparel.

3. That the general term, " knit-goods," first found in the Act of 1867, cannot operate to repeal the specific provisions for stockings, &c., more especially when it appears as it does that there are stockings and other knit-goods *not* made on frames.

4. That full effect can be given to all these provisions upon the construction contended for by defendant in error.

5. That the construction contended for by plaintiff in error can only be given effect to by finding a repeal by implication, which Congress in revising the statutes failed to discover.

STEPHEN G. CLARKE,
Of Counsel for Defendants in Error.